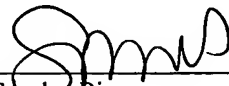PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

CERTIFICATE OF MAILING

I hereby certify that the foregoing document is being deposited with the United States Postal Service as first class mail, postage prepaid, "Post Office to Addressee", in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on July 21, 2010.

Sandra Pires

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Application Serial No.: 10/551,544

Filed/371(c): February 21, 2006

Applicants/Appellants: Osamu KURAI et al.

Title: SEARCH DEVICE AND INFORMATION PROVIDING SYSTEM

Appeal from a decision of the Primary Examiner dated December 9, 2009

Atty. Docket: VPM-01401

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REAL PARTY IN INTEREST

The above-identified application is assigned to **Vodafone Group PLC** by virtue of Assignment documents recorded by the U.S. Patent and Trademark Office on February 21, 2006, at Reel 018716 / Frame 0357; on January 23, 2008, at Reel 020401 / Frame 0001; and on January 24, 2008, at Reel 020409 / Frame 0037.

RELATED APPEALS AND INTERFERENCES

Appellants are not aware of any other appeals, interferences or judicial proceedings related to the above-identified application.

STATUS OF CLAIMS

This is an appeal from a decision of the Primary Examiner in the Final Office Action dated December 9, 2009 (and Advisory Action dated June 4, 2010) finally rejecting claims2-6 and 9-26 in the above identified patent application; and claims 2-6 and 9-26 are on appeal. Claims 2-6 and 9-26 stand rejected under 35 U.S.C. 102(e). Claims 1, 7 and 8 have been previously cancelled. No claim has been allowed or indicated to contain allowable subject matter. Appellants appeal the above-noted rejections. A Notice of Appeal was submitted on May 7, 2010.

STATUS OF AMENDMENTS

Appellants filed an Amendment and Response on April 11, 2008, in response to the non-final Office Action dated December 12, 2007, in which claim amendments were made and accordingly entered by the Examiner. Appellants filed an after-final Response on

November 17, 2008, in response to the Final Office Action dated July 22, 2008, in which claim amendments were proposed and entered by virtue of a corresponding RCE filed on even date therewith. Appellants filed an Amendment and Response on July 20, 2009, in response to the non-Final Office Action dated March 19, 2009, in which amendments were proposed and accordingly entered by the Examiner. Appellants filed a Notice of Appeal on May 7, 2010, in response to the Final Office Action dated December 9, 2009, which did not involve any claim amendments. Before filing an Appeal Brief, Appellants filed a Response to the Final Office Action dated December 9, 2009, which did not include any claim amendments, and received an Advisory Action dated June 4, 2010. This Appeal Brief follows receipt of the Advisory Action. Accordingly, all proposed claim amendments have been appropriately entered in the above-captioned application. The claims involved in this Appeal are set forth in the attached Claims Appendix.

SUMMARY OF CLAIMED SUBJECT MATTER

I. Background

The presently-claimed invention is directed to content searching. Use cases might include searching a database for a ringtone or, maybe, running a Google search to find some requested content to render on a receiving device (cell phone). The presently-claimed invention addresses the problem that all content available through a general search may not be suitable for rendering on a particular device due to device capabilities (e.g. screen size, audio capabilities etc). The presently-claimed invention solves this problem by limiting the search result, in connection with the actual obtaining of search results, based on device capabilities.

II. Appellants' Claimed Invention

Appellants' claims are discussed below in connection with portions of the specification and figures for purposes of non-limiting example and explanation only in accordance with 37 C.F.R. 41.37(c)(v).

Independent claim 4 recites a search device (20) providing a search results to a requesting terminal unit (50) (see, e.g., Figs. 1 and 2 and page 12, lines 16-28 of the originally-filed specification), the search results including at least one address corresponding to content provided by a content providing server capable of providing content (100, 200), the data provided by the content providing server (100, 200) corresponding to information showing a capacity of the requesting terminal unit (50) included in an information request command along with a key word from the requesting terminal unit (50) (see, e.g., page 19, lines 10-30). The search device includes a search server (20) that provides a crawling means (21) for searching predetermined addresses corresponding to the content by using the information showing the capacity of the requesting terminal unit according to a typical model of the requesting terminal unit in a model group, the model group being set according to the capacity (see, e.g., page 19, line 10 to page 20, line 10), a search index (22) holding the predetermined addresses corresponding to the content obtained by the crawling means (21) in correspondence to an identifier (e.g., model name "V-xyz") that identifies the requesting terminal unit (50) in the model group at a time of crawling, a searching means (23) for gobbling down the predetermined addresses in the search index which correspond to content corresponding to the key word and the identifier included in the information request

command from the requesting terminal unit (see, e.g., page 24, lines 17-31)) and a search result generating means (23) for generating a search result including the predetermined addresses gobbled down by the searching means (see, e.g., page 29, lines 16 28). Claims 2, 3, 9 and 10 depend, directly or indirectly, from independent claim 4.

Independent claim 5 recites an information providing system (see, e.g., Figs 1-3 and page 12, lines 16-28 of the originally-filed specification), that includes a content providing server (100, 200) capable of providing content, the content provided by the content providing server (100, 200) including data corresponding to information showing a capacity of a terminal unit (50) included in an information request command (see, e.g., page 19, lines 10-30) and a search device (20), coupled to the content providing server (100, 200), that provides a crawling means (21) for searching at least one address of the content by using the information showing the capacity of the terminal unit (50) according to a typical model of the terminal unit in a model group, the model group being set according to the capacity (see, e.g., page 19, line 10 to page 20, line 10), a search index (22) holding the at least one address of the content obtained by the crawling means (21) which correspond to content corresponding to an identifier (e.g., model name "V-xyz") that identifies the terminal unit in the model group at a time of crawling, and a searching means (23) for gobbling down the at least one address of the content in the search index in correspondence to the identifier included in the information request command from the terminal unit (see, e.g., page 24, lines 17-31 and page 29, lines 16 28).

Independent claim 6 recites an information searching system (see, e.g., Figs 1-3 and page 12, lines 16-28 of the originally-filed specification), that includes a content providing server (100, 200) capable of providing content, the content provided by the content providing server (100, 200) including data corresponding to information showing a capacity of a terminal unit (50) included in an information request command and a key word (see, e.g., page 19, lines 10-30); and a search device (20), coupled to the content providing server (100, 200), that provides a crawling means (21) for searching at least one predetermined address corresponding to the content by using the information showing the capacity of a typical model of the terminal unit in a model group, the model group being set according to the capacity (see, e.g., page 19, line 10 to page 20, line 10), a search index (22) holding the at least one predetermined address of the content obtained by the crawling means (21) in correspondence to a an identifier (e.g., model name "V-xyz")that identifies the terminal unit in the model group at a time of crawling, a searching means (23) for gobbling down the at least one predetermined address in the search index which correspond to content corresponding to the key word and the identifier included in the information request command from the terminal unit (50) (see, e.g., page 24, lines 17-31), and a search result generating means (23) for generating a search result including the predetermined addresses gobbled down by the searching means (see, e.g., page 29, lines 16-28). Claims 13 and 14 depend from independent claim 6.

Independent claim 15 recites a method for providing a search service (see, e.g., Figs. 12 and 13 and page 29, lines 16-28). The method includes providing a server (see, e.g., information providing servers 100, 200 or using the search server/device 20; Figs. 12, 13)

that includes data, receiving, at the server, a request generated for a requesting device (50) corresponding to the data in the server, wherein the request includes capacity information of the requesting device and requested content (see, e.g., page 19, lines 10-30 and see step S201, Figure 12 and steps S301, Figure 13), searching the data in the server to provide search results according to the capacity information of the requesting device and according to the requested content (see, e.g., page 19, line 10 to page 20, line 10), and sending the search results to the requesting device (50) in response to the request, wherein the search results correspond to the capacity information of the requesting device and the requested content (see, e.g., page 29, lines 16-28; see also Figs. 12 and 13). Claims 16, 17 and 18 depend from independent claim 15.

Independent claim 19 recites a method for requesting data from a server (see, e.g., information providing servers 100, 200 or using search server/device 20; page 29, lines 16-28 and Figs. 12 and 13). The method includes sending a request generated for a requesting device (50) to the server (100, 200 or using search server/device 20), where the request corresponds to data in the server (100, 200 or 20), and where the request includes capacity information of the requesting device and requested content (see, e.g., page 19, lines 10-30 and see step S201, Figure 12 and steps S301, Figure 13) and receiving, at the requesting device, search results from the server (100, 200; or using search server/device 20; see also Figs. 12 and 13), wherein the search results correspond to the capacity information of the requesting device and to the requested content (see, e.g., page 19, line 10 to page 20, line 10; see also, page 29, lines 16-28). Claims 20, 21 and 22 depend from independent claim 19.

Independent claim 23 recites an information providing server group (100, 200; see, e.g., Figs. 1 and 3) that includes at least one information providing server (100) that includes a storage portion (110) that stores information corresponding to a request generated for a requesting device (50), the request including capacity information of the requesting device and requested content (see, e.g., step S201, Figure 12 and step S301, Figure 13), and a content server (120), coupled to the storage portion (110), that provides search results to the requesting device (50) in response to the request, where the search results vary according to the capacity information of the requesting device (50) and according to the requested content (see, e.g., page 19, line 10 to page 20, line 10 and page 29, lines 16-28). Claims 24, 25 and 26 depend from independent claim 23.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 2-6 and 9-26 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,310,628 to Sugimoto et al. (hereinafter "Sugimoto").

ARGUMENT

The Examiner has failed to establish a prima-facie case under 35 U.S.C. §102(e) of claims 2-6 and 9-26 as being anticipated by Sugimoto.

A. Anticipation Standard

To establish a proper case of anticipation in rejecting claims under 35 U.S.C. §102, it is necessary for the Examiner to demonstrate that each element of the claim in issue is found, either expressly described or under principles of inherency, in a single prior art reference or that the claimed invention was previously known or embodied in a single prior art device or practice. *See, e.g., Verdegaal Bros. v. Union Oil Co. of California,* 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); *Kalman v. Kimberly-Clark Corporation,* 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983). The exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference. *Atlas Powder Co. v. E.I. Du Pont De Nemours & Co.,* 750 F.2d 1569, 1574, 224 USPQ 409, 411 (Fed. Cir. 1984).

B. The cited reference does not teach or fairly suggest every element of Appellants' claimed invention.

The rejection of claims 2-6 and 9-26 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,310,628 to Sugimoto (hereinafter "Sugimoto") is hereby traversed and it is respectfully requested that the Board overturn the rejection.

1. Independent Claims 4, 5, 6, 15 and claims depending therefrom

Sugimoto discloses a content searching/distribution device and method. A content retrieving section searches a database based upon input retrieval keys and outputs a retrieval list to a retrieval result list editing section. A terminal ability information acquiring section acquires information about processing ability of the terminal from the user information input to the user information inputting section and the retrieval result list edition section edits the retrieval result list from the content retrieving section based upon its processing ability information and an output content editing section edits the contents based upon the terminal ability information. The Final Office Action cites principally, to col. 4, lines 13-15; col. 7, lines 1-25; col. 3, lines 11-18; col. 13, lines 64 - col. 14, line 6 and col. 2, lines 40-49 of Sugimoto.

In independent claims 4, 5, 6 and 15, Appellants specifically recite features involving the searching of content provided by a content providing server/server including data that corresponds to information showing a capacity of the requesting terminal unit/device and according to requested content. Appellants' recited search server includes a crawling means for searching predetermined addresses corresponding to said content by using the information showing the capacity of the requesting terminal unit. A search index holds the predetermined-addresses corresponding to the content obtained by said crawling means in correspondence to an identifier that identifies the requesting terminal unit in the model group at a time of crawling. A searching means gobbles down the predetermined addresses in said search index which correspond to content corresponding to the key word and the identifier

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included in the information request command from the requesting terminal unit. Appellants recited search method includes receiving, at the server, a request generated for a requesting device corresponding to the data in the server, wherein the request includes capacity information of the requesting device and requested content; and searching the data in the server to provide search results according to the capacity information of the requesting device and according to the requested content. Thus, Appellants recited claims provide for searching content according to requested content and based on capacity information of a device to provide content search results that are suitable for the device, e.g., to be displayed on the device.

In contrast, Sugimoto's system operates the other way around than is recited by Appellants. Sugimoto retrieves all content that corresponds to key words, creates a retrieval result list, and *then* edit/filters the list according to terminal capabilities. Appellants refer, in particular, to Figure 4, and discussion thereof in col. 6, line 62 to col. 9, line 9, and particularly col. 7, lines 6-25 of Sugimoto. Appellants explicitly refer to the last paragraph of col. 8 of Sugimoto that makes it clear that, in Sugimoto, the content results list obtained from key word searching of database may contain content that is not able to be rendered on the device:

> [I]f the output content editing section 13 determines that the content read from the database B can not be received and displayed or otherwise output on the terminal (Step ST21 "No"), it edits the content read from the database B by transforming or otherwise processing the content into a form that can be received and displayed or can otherwise be output on the terminal D (Step ST22), and then outputs the edited content to the content delivering section 14.

A general content search component, like that described in Sugimoto, returns *all* content that meets the requested content search criteria (e.g., contains a particular key word) whether or not the content can be rendered on the receiving device. The device of Sugimoto then filters the search results based on the capabilities of the receiving device and outputs the filtered search results. For example, a cell phone user could search for ring tones meeting a particular criteria (e.g., Michael Jackson songs). In the case of Sugimoto, the device would initially receive messages for resulting ring tones that cannot be rendered on the user's cell phone. For example, the device could receive two hundred messages corresponding to searched ring tones and then limit the search results to ring tones that are compatible with the user's cell phone. On the other hand, with the presently-claimed invention, the search results from the web crawling correspond only to ring tones capable of being played on the user's cell phone. Thus, unlike Sugimoto, using the present invention results in the searching of only appropriate content for the user's cell phone, thus lowering the processing overhead on the server and not performing unnecessary processing to search for content that cannot be rendered on a user's cell phone.

Thus, Appellants' presently-claimed invention differs from Sugimoto's disclosure in that the initial search identifies content which is suitable for rendering on the device, thereby advantageously reducing processing time and communications across a network. That is, unlike Sugimoto's device that, for each search, scans the whole database (e.g., the Internet) for search keywords and then limits the results by device suitability, Appellants' presently-claimed invention provides a search result that initially creates a result subset that only includes content suitable for the device and then allows for searching that subset for

particular keywords. An advantage to Appellants' recited claims is that once the initial search has been performed, the user can run multiple key word searches on the filtered data without extended searches on the whole database across the network. Specifically, Appellants submit the Sugimoto does not teach or fairly suggest at least the features of: a crawling means for searching predetermined addresses corresponding to said content by using the information showing the capacity of the requesting terminal unit; a search index for holding the predetermined-addresses corresponding to the content obtained by said crawling means in correspondence to an identifier that identifies the requesting terminal unit in the model group at a time of crawling; a searching means for gobbling down the predetermined addresses in said search index which correspond to content corresponding to the key word and the identifier included in the information request command from the requesting terminal unit, as recited by Appellants.

In the Advisory Action, the Examiner appears to concede that Sugimoto discloses, as noted by Appellants, retrieving all content that corresponds to key words, creates a retrieval result list, and then edits the list according to terminal capabilities. The Examiner then goes into a discussion of additional steps in a "Third Embodiment" of Sugimoto. As specifically stated by the Examiner in the Advisory Action in discussing Sugimoto:

> Sugimoto does not only disclose a retrieving all content that corresponds to key words, creates a retrieval result list, and then edit the list according to terminal capabilities; but also discloses in the Third Embodiment (e.g., the user information input to the user information inputting section 8 is sent to the terminal ability information acquiring section 9 and the information about the processing ability of the terminal D that is included in the user information is acquired by the terminal ability information acquiring section 9 (Step ST66).

However, Appellants submit that, regardless of whatever other additional steps are taken by Sugimoto, the citation to additional steps cannot overcome the deficiencies of Sugimoto that have been pointed out by Appellants concerning the retrieval of *all* content that corresponds to key words, creates a retrieval result list, and *then* editing the list according to terminal capabilities. Indeed, the particular additional steps that are cited by the Examiner in connection with the "Third Embodiment" of Sugimoto appear to correspond to the editing of the retrieval list according to terminal capabilities, which occurs after all content corresponding to key words has already been searched and retrieved in Sugimoto.

Accordingly, Appellants respectfully submit Sugimoto does not disclose at least the features of a crawling means for searching predetermined addresses corresponding to said content by using the information showing the capacity of the requesting terminal unit according to a typical model of the requesting terminal unit in a model group, the model group being set according to the capacity, or a method of providing a search service that includes at least the features searching the data in the server, the server providing the data that is to be searched in response to a request, to provide search results according to the capacity information of the requesting device and according to the requested content, among other features as recited Applicants. In view of the above, it is respectfully requested that the Board overturn the rejection.

2. **Independent Claims 19 and 23 and claims depending therefrom**

In independent claims 19 and 23, Appellants recite features of a method for requesting data from a server and for an information providing server group that include the use of a request generated for a requesting device to the server, wherein the request corresponds to data in the server, and wherein the request includes capacity information of the requesting device and requested content. Appellants respectfully submit that Sugimoto does disclose or provide for the use of a request that includes capacity information of the requesting device and requested content that is used in connection with the searching of data/content on the server.

As discussed above, Sugimoto explicitly provides for the searching and retrieval of *all* content that corresponds to key words, creates a retrieval result list, and *then* edit/filters the list according to terminal capabilities. Sugimoto is silent as the use of a generated request for requested content that includes capacity information of the requesting device. At best, as discussed, Sugimoto provides for generation of request that includes key words that are used in connection with searching and retrieving all content that corresponds to the key words, followed by later editing of the retrieval list according to user input that is input at a user information input section (see the discussion in the Advisory Action concerning the disclose of a user information input in Sugimoto that is discussed by the Examiner as a step in addition to the retrieval of *all* content that corresponds to key words, the creation of a retrieval result list, and the editing/filtering the list according to terminal capabilities as provided in Sugimoto).

Accordingly, Appellants respectfully submit that Sugimoto does not teach or fairly suggest at least the above-noted features as claimed by Appellants. In view of the above, for reasons set forth above, Appellants respectfully request that this rejection be reconsidered and withdrawn.
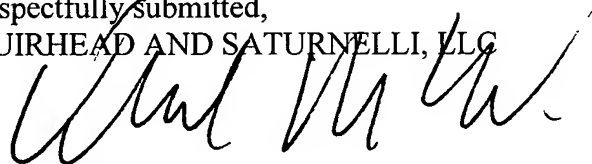
CONCLUSION

In view of the above, it is respectfully requested that the Board reverse all of the Examiner's rejections under 35 U.S.C. 102.

Respectfully submitted,
MUIRHEAD AND SATURNELLI, LLC

Date: July 21, 2010

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CLAIMS APPENDIX

The claims involved in this Appeal are as follows:

1. (Cancelled)

2. (Previously presented) The search device as claimed in claim 4, wherein said model group is provided per kind of the content.

3. (Previously presented) The search device as claimed in claim 4, further comprising:

a template corresponding to every said terminal units of a plurality of generations in which the capacities of the search results are different;

a generation detecting means for detecting the generation of the terminal unit to which the information request command to said search means is supplied; and

a search result generating means for generating the data of the search result in correspondence to the generation of the terminal unit detected by said generation detecting means.

4. (Previously presented) A search device providing search results to a requesting terminal unit, the search results including at least one address corresponding to content provided by a content providing server capable of providing content, the content provided by the content providing server corresponding to information showing a capacity of the requesting terminal unit included in an information request command along with a key word from the requesting terminal unit, the search device comprising:

a search server that provides:

a crawling means for searching predetermined addresses corresponding to said content by using the information showing the capacity of the requesting terminal unit according to a typical model of the requesting terminal unit in a model group, the model group being set according to the capacity;

a search index holding the predetermined-addresses corresponding to the content obtained by said crawling means in correspondence to an identifier that identifies the requesting terminal unit in the model group at a time of crawling; .

a searching means for gobbling down the predetermined addresses in said search index which correspond to content corresponding to the key word and the identifier included in the information request command from the requesting terminal unit; and

a search result generating means for generating a search result including said predetermined addresses gobbled down by the searching means.

5. (Previously presented) An information providing system, comprising:

a content providing server capable of providing content, the content provided by the content providing server including data corresponding to information showing a capacity of a terminal unit included in an information request command; and

a search device, coupled to the content providing server, that provides:

a crawling means for searching at least one address of said content by using the information showing the capacity of the terminal unit according to a typical model of the terminal unit in a model group, the model group being set according to the capacity;

a search index holding the at least one address of the content obtained by said crawling means which correspond to content corresponding to an identifier that identifies the terminal unit in the model group at a time of crawling; and

a searching means for gobbling down the at least one address of the content in said search index in correspondence to the identifier included in the information request command from the terminal unit.

6. (Previously presented) An information searching system, comprising:

a content providing server capable of providing content, the content provided by the content providing server including content corresponding to information showing a capacity of a terminal unit included in an information request command and a key word; and

a search device, coupled to the content providing server, that provides:

a crawling means for searching at least one predetermined address corresponding to said content by using the information showing the capacity of a typical model of the terminal unit in a model group, the model group being set according to the capacity;

a search index holding the at least one predetermined address of the content obtained by said crawling means in correspondence to a an identifier that identifies the terminal unit in the model group at a time of crawling;

a searching means for gobbling down the at least one predetermined address in said search index which correspond to content corresponding to the key word and the identifier included in the information request command from the terminal unit; and

a search result generating means for generating a search result including said predetermined addresses gobbled down by the searching means.

Claims 7 - 8 (Cancelled).

9. (Previously presented) The search device as claimed in claim 4, wherein the capacity includes a content display capacity.

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10. (Previously presented) The search device as claimed in claim 4, wherein the identifier that identifies the terminal unit is a model name.

11. (Previously presented) The information providing system as claimed in claim 5, wherein the capacity includes a content display capacity.

12. (Previously presented) The information providing system as claimed in claim 5, wherein the identifier that identifies the terminal unit is a model name.

13. (Previously presented) The information searching system as claimed in claim 6, wherein the capacity includes a content display capacity.

14. (Previously presented) The information searching system as claimed in claim 6, wherein the identifier that identifies the terminal unit is a model name.

15. (Previously presented) A method for providing a search service, comprising:

provicing a server that includes data;

receiving, at the server, a request generated for a requesting device corresponding to the data in the server, wherein the request includes capacity information of the requesting device and requested content;

searching the data in the server to provide search results according to the capacity information of the requesting device and according to the requested content; and

sending the search results to the requesting device in response to the request, wherein the search results correspond to the capacity information of the requesting device and the requested content.

16. (Previously presented) The method as claimed in claim 15, wherein the capacity information includes display capacity information of the requesting device.

17. (Previously presented) The method as claimed in claim 15, wherein the identification information includes a model name of the requesting device.

18. (Previously presented) The method as claimed in claim 15, wherein the requesting device is a cellular phone.

19. (Previously presented) A method for requesting data from a server, comprising:

sending a request generated for a requesting device to the server, wherein the request corresponds to data in the server, and wherein the request includes capacity information of the requesting device and requested content; and

receiving, at the requesting device, search results from the server, wherein the search results correspond to the capacity information of the requesting device and to the requested content.

20. (Previously presented) The method as claimed in claim 19, wherein the capacity information includes display capacity information of the requesting device.

21. (Previously presented) The method as claimed in claim 19, wherein the identification information includes a model name of the requesting device.

22. (Previously presented) The method as claimed in claim 19, wherein the requesting device is a cellular phone.

23. (Previously presented) An information providing server group, comprising:

at least one information providing server that includes:

a storage portion that stores information corresponding to a request generated for a requesting device, the request including capacity information of the requesting device and requested content; and

a content server, coupled to the storage portion, that provides search results to the requesting device in response to the request, wherein the search results vary according to the capacity information of the requesting device and according to the requested content.

24. (Previously presented) The information providing server group as claimed in claim 23, wherein the capacity information includes display capacity information of the requesting device.

25. (Previously presented) The information providing server group as claimed in claim 23, wherein the identification information includes a model name of the requesting device.

26. (Previously presented) The information providing server group as claimed in claim 23, wherein the requesting device is a cellular phone.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.